IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 10795-859/2006

R.PRASAD & ORS. ..... Petitioners
Through: Ms. Anusuya Salwan, Advocate.

versus

GOVT. OF N.C.T. OF DELHI & ORS ..... Respondent
Through: Mr. Sanjay Poddar, Advocate.

Date of Hearing: January 16, 2007
Date of Decision: January 16, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MS. JUSTICE HIMA KOHLI

1. Whether Reporters of local papers may be allowed to see the Judgment.
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VIKRAMAJIT SEN, J (ORAL)

1. The prayer in these Writ Petitions is for issuance of an appropriate writ or direction quashing the impugned order dated 24.4.2006 passed by the Land Acquisition Collector, who had declined to make a Reference for enhancement of compensation under Section 18 of the Land Acquisition Act (hereinafter referred to as "the Act") on the ground that the applications were time barred. The second prayer is for issuance of writ or order in

the nature of mandamus directing the Land Acquisition Collector to refer the dispute with respect to enhancement of compensation under Section 18 of the Act to the court of the Additional District Judge.

2. The Award in this case was pronounced on 30.6.2004 in the presence of the Association, namely, Indraprakash Apartment Occupants Association (hereinafter referred to as "the Association") of which the present petitioners were parties. After the passing of the Award the Association addressed the letter dated 14.7.2004 to the Land Acquisition Collector which reads as follows:

> "July 14, 2004
> Land Acquisition Collector
> New Delhi District
> 12/1, Jamnagar House
> New Delhi
>
> Sub: Acquisition of Land for DMRC of Indraprakash Building, 21, Barakhamba Road, Indraprakash Building, New Delhi-110001.
>
> Dear Sir,
>
> I received your Notice no. F 9(1)/ LA/ND/CP/2003/2422 dated 25/06/04 as Secretary of Indraprakash Apartment Occupants Association regarding personal presence of interested parties for announcement of the award of our land acquired for DMRC. Similar notices were also received by several flat owners of Indraprakash Building who have filed individual claims for compensation. I alongwith a number of flat owners and office bearers of the Association were present in your office on 30th June

'04 when you announced the said award. In this connection, we have to state as under:-

1) That the land on which the building Indraprakash has been constructed originally belong to Shri Jagmohan Kapur, Shri Joginder Kapur, Shri Shiv Kapur etc.
2) That Shri Jagmohan Kapur and others entered into an agreement with M/s Ansal for constructing the Indraprakash Building and shared the build up area. Kapurs and Ansals retained some of the flats and sold the rest to different people.
3) That the present flat owners purchased the flats in the Indraprakash Building and have acquired ownership rights in the building and the adjoining land etc. for valuable consideration under the Transfer of Property Act.
4) That the total land of 21 Barakhamba Road is part and parcel of the Indraprakash Building and each flat owner holds a proportionate share in the land of the building. Thus, the total land of 21 Indraprakash Building is jointly owned by all the flat owners including Ansals and Kapurs in respect and in proportion of the flats retained by them proportionately.
5) That all the flat owners are having a Flat Buyers Agreement duly executed between them and the builders i.e. M/s Ansals or Kapurs in respect of the flats shared between them, as the case may be.
6) That the owners have paid mutation charges to the NDMC and mutation has also been done in the records of NDMC.
7) That the Delhi Apartment Ownership Act, 1986 and the Delhi Apartment Ownership Rules in 1987 which has also been notified vide Notification No. F. 16 (6)/76/LKB/Coord. Vol. III/1378 dated

November 30, 1987 also defines the rights of the flat owners in the land and other common areas etc.

8) That to the surprise of the flat owners in the award on page no.10 line no.10, it is stated that the L&DO has re-entered on the land of Indraprakash Building vide letter no. L&DO/L1-9/148(47)/3/294 dated 09/06/03. Neither the L&DO nor the Kapurs or Ansals have informed the flat owners about it and as such we are not aware of the reasons as well.

9) That the flat owners having a legal ownership and interest in the said land of the building have not been notified and as such is not possible to give any comments in the matter.

It is observed that a sum of Rs. 57,38,229/- has been assessed as the value of the structure boundary walls, gates and other services for relocation and reconstruction. All the utility services have been shifted from the acquired land to the other side but the same is incomplete in various aspect which have been brought to the notice of Shri Jagmohan Kapur who undertook the complete shifting of facilities and services of the reconstruction work as per the order passed by the honorable High Court of Delhi on 16/09/03 vide CWP No.5133/2003.

The price of the land assessed is much lower than the market price. In order to arrive at fair market price comparison have been made with the land prices in Babar Lane, upper ground floor, mezzanine floor, some plot no.64 in block no. 205 in Bengali market which is not relevant to the land in front of the buildings in Barakhamba Road.

In view of the above, we will be seeking legal remedy for enhancing the compensation and payment of compensation to the flat owners in proportion to their holdings and request you not to release the amount of compensation awarded by you either to L &DO or to Kapurs' or any other claimant till the matter is finally

adjudicated by the court.

We also request you not to release the amount of compensation to Shri Jagmohan Kapur for relocation and transfer of services till they complete the work to the satisfaction of the association, which represent the flat owners.

Thanking you,

Yours truly,

R.Prasad
HONY SECRETARY

cc:Executive committee Members
Notice Board."

3. Ms. Anusuya Salwan, learned counsel appearing for the Petitioners, contends that on holistic reading of this letter it would be evident that it complies with all the requirements of an application under Section 18 of the Land Acquisition Act seeking enhancement of compensation. Avowedly no proforma of the application under Section 18 of the Act has been prescribed. Emphasis has been laid by learned counsel on the third last paragraph of letter dated 14.7.2004 which makes a grievance of applying land prices in Babar Lane and Bengali Market rather than in respect of Barakhamba Road.

4. Mr. Poddar, learned counsel appearing for the Land Acquisition Collector, lays emphasis on the second last paragraph of that letter which states that the Petitioners "will be seeking

legal remedy for enhancing the compensation". Mr. Poddar contends that this communication pertains only to the non-release of the compensation and not to a request under Section 18 of the Act. Predicated on these words he contends that no application had in fact been made under Section 18 of the Act. He further contends that after the pronouncement of the Award, CWP No.13862/2004 and 13371-72/2004 had been filed in which the prayers canvassed before us in this Petition, could easily have been made. He presses legal principles analogous and assimilable to constructive res judicata to submit that the present Petition should not be entertained.

5. However, it has been explained by Ms. Salwan that the threat that had been faced by the petitioners at that moment of time was that the substantial part of the compensation was to be released to the L & DO on the ground that the property had been re-entered. On the first date of hearing interim orders have been passed restraining the respondents from releasing any compensation to the L& DO. In those proceedings, it transpired that the subject compensation came to be deposited by the Respondents in the Court of the Additional District Judge, New Delhi, under Section 30/31 of the said Act. The apprehension of the Petitioners that the compensation may have been released to

the L&DO was, therefore, allayed. The consequence was that the Petitioners withdrew the said Writ Petitions.

6. Mr. Poddar further draws our attention to the fact that yet another series of Writ Petitions bearing No. W.P.(C) 13272/2005 & 13361/2005 had been filed by the Association and some flat owners seeking a Reference under Section 18 of the Act. On 25.4.2006 this Court noted that the impugned order dated 24.4.2006, rejecting the Petitioner's prayer for Reference under Section 18 had been dismissed on grounds of being time barred. Those writ petitions were, therefore, permitted to be withdrawn with liberty to assail the legal propriety of the said order, and reserving to the Petitioners the right to raise all grounds that had been taken in the said Writ Petitions. It is in these circumstances that the present Writ Petition has been filed.

7. Mr. Poddar's contention that the principles of constructive res judicata should persuade us to dismiss the present Writ Petition does not commend itself. The reasons for filing the previous Petitions were either directed against the perceived apprehension of release of the compensation to the L& DO or for apportionment under Section 30, which had been adequately answered by deposit of the compensation in the Court of the Additional District Judge as contended by learned counsel

for the Petitioner. What we have to consider, therefore, is whether the letter dated 14.7.2004 can be construed as the action envisaged under Section 18 of the Act. In this regard, we have mentioned the fact that in proceedings in W.P.(C) 13272/2005 liberty had been granted by this Court to the individual owners to move applications under Section 18 "in furtherance of the application already moved through the Association". This would have concluded the entire controversy but for the contention of Mr. Poddar that the question had been raised even in those proceedings that the letter dated 14.7.2004 could not be construed as seeking a Reference under Section 18 of the Act. It should not be ignored that even in interim proceedings as well as in the petition before us it has not been contended that the Association was incompetent to move an application under Section 18 on behalf of its members. This is for obvious reasons since even at the stage of the pronouncement of the Award the Association had been specifically taken into notice and communications had been addressed to it.

8. Having given our careful consideration to the arguments raised before us and having perused the letter dated 14.7.2004, we are of the opinion that it must be construed as a request by the Association also on behalf of the Petitioners before

us to the Land Acquisition Collector to make a Reference under Section 18 to the Additional District Judge. In this regard, we are mindful of the views of the Supreme Court reiterated in ***Sushil Kumar Sen v. State of Bihar*** [(1975) 1 SCC 774] and ***State of Punjab v. Shamlal Murari*** [(1976) 1 SCC 719], conveniently digested by subsequent judgment in ***Kailash v. Nanhku*** [(2005) 4 SCC 480], the relevant portion of which reads as follows:

> "28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the stature, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar are pertinent: (SCC p. 777, paras 5-6)
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> > "The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.
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> > The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable.... Justice is the goal of

> jurisprudence -processual, as much as substantive."
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> 29. In State of Punjab v. Shamlal Murai the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)
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> > "Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."
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> In Ghanshyam Dass. v. Dominion of India the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.

9. It is for these reasons that the reliance by Mr.Poddar on ***Mahadeo Bakorap Patil v. State of Maharashtra and others*** *[2005 (7) SCC 440]*, in particular to para 14 thereof, does not create any impediment in the passing of the aforementioned orders. The said decision recognizes the absence of any power with the Land Acquisition Collector to consider a time barred action under Section 18 of the Act. We say this because as soon as the communication dated 14.7.2004 is construed to be sufficiently compliant with Section 18 of the Act, the question of limitation does not arise at all, inasmuch as Section 18(2) of the Act prescribes a period of six weeks for moving the said action,

commencing from the date of the Award. Mr. Poddar contends that this communication pertains only to the non-release of the compensation and not to a request under Section 18 of the Act. We cannot agree with him in view of the interpretation given by us to the secondary paragraphs of the said letter.

10. In these circumstances, the Writ Petitions are allowed. The impugned order dated 24.4.2006 is set aside. The letter dated 14.7.2004 shall be treated as a request for a Reference under Section 18 of the Land Acquisition Act. Mandamus will, therefore, issue to the Respondents to take requisite steps to ensure that the Reference is made to the court of Additional District Judge, Delhi forthwith. Petition is allowed but there shall be no order as to costs.

VIKRAMAJIT SEN, J

HIMA KOHLI, J

JANUARY 16, 2007
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